IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Revision No. 671 of 1995

Date of decision: November 22, 2007

Gurmail Singh @ Gela Singh ... Petitioner

Versus

State of Punjab ... Respondent

...

CORAM: HON'BLE MR. JUSTICE HARBANS LAL

...

Present: Mr. Raman B.Garg, Advocate
for the petitioner.

Mr. A. S. Brar, Deputy Advocate
General, Punjab, for the respondent-State.

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HARBANS LAL, J

This revision has been directed against the judgment dated 24th October, 1994 rendered by the Court of Judicial Magistrate Ist Class, Barnala, vide which he convicted and sentenced the accused-petitioner to undergo rigorous imprisonment for one year and to pay a fine of Rs.100/- or in default thereof, to further undergo rigorous imprisonment for 15 days, as well as the judgment dated 25th August, 1995 delivered by the Court of learned Additional Sessions Judge, Barnala, whereby he dismissed the appeal.

The facts, in brief, of the prosecution case are that on 28th October, 1993, a Police Party headed by ASI Jasbir Singh was proceeding from Village Kothe Dharampura towards Village Balloke via Kacha passage in connection with patrolling. When the Police Party was a little bit short of bridge of drain Dharampura Kothe, the accused was spotted approaching afoot from the opposite direction. On catching sight of the Police Party, he got perturbed and turned towards the path of drain on his left side. On suspicion, he was intercepted by the above mentioned ASI with the help of other Police Officials. On his personal search, a country made pistol of 12 bore duly loaded along with two live cartridges was recovered. He was arrested. A Ruqa was sent to the Police Station, where on its basis, formal FIR was recorded. After completion of investigation, the charge sheet was laid in the Court of Ilaqa Magistrate. The accused was charged under Section 25 of Arms Act, to which he did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution examined ASI Jasbir Singh (PW-1), Constable Bahadur Singh (PW-2), Ashok Kumar, Arms Clerk, D.C.Office, Sangrur (PW-3) and closed its evidence. When examined under Section 313 of Criminal Procedure Code (for short, 'the Code'), the petitioner denied all the incriminating circumstances appearing in the prosecution evidence against him. He put forth that he was arrested from his Village in the presence of Atma Singh, Amar Singh and Jiti Panch and was falsely implicated in this case. In defence, he examined Jit Singh, DW-1 and Constable Balkar Singh, DW-2 and closed his defence evidence.

After hearing the learned Assistant Public Prosecutor for the State as well as learned defence counsel, and examining the evidence on

record, the learned trial Court convicted and sentenced the petitioner, as noticed at the outset. Feeling dissatisfied with the judgment/order of sentence, he preferred an appeal, which was dismissed by the learned Additional Sessions Judge, Barnala.

I have heard the learned counsel for the petitioner as well as learned State counsel.

Mr. Raman B.Garg, Advocate (amicus curiae) appearing on behalf of the petitioner, realizing that he would not be able to persuade this Court to take a contrary view on the evidence already appreciated by the Courts below, made a misericordious submission for release of the petitioner on probation.

As would be apparent from the record, the petitioner was admitted to bail by this Court as far back as on 16th October, 1995. This incidence is 14 years old. There is nothing on record to show that while on bail, the petitioner made misuse of the same by indulging into some criminal activities.

The Courts below have not recorded any special reason for withholding the benefit of probation from the petitioner. Statutorily speaking, it is obligatory upon the Court to record special reasons for withholding such benefit in view of the provisions enshrined in Section 361 of the Code. Here in this case, if the petitioner is sent to the prison forthwith, without affording an opportunity for reformation, he by coming into association with the criminals within the four walls of the jail, may turn out to be a hardened criminal. The petitioner should not be deprived of the benefit of benign provisions of Section 360 ibid. So, without sojourning any longer on the short point and taking into consideration the entirety of

facts and circumstances of the case, I deem it expedient to bestow the benefit of probation on the petitioner, who is directed to be released on probation of good conduct on being furnished probation bonds in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of learned trial Court. He shall keep the peace and be of good behaviour during his probation period of one year. However, he is burdened with prosecution costs, quantified at Rs.2,000/-. He shall come and receive sentence as and when required by the Court. If he fails to furnish the bail bonds within a period of two months from today, he shall be sent to the jail for serving the remainder of sentence.

Accordingly, this revision is disposed of.

(HARBANS LAL)
JUDGE

November 22, 2007

RS